

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

cel 476

FILE: B-187280

DATE: September 13, 1976

MATTER OF: National Beryllia Corporation

98046

DIGEST:

Although it is not clear whether protest against award of subcontract comes within criteria for GAO review of subcontract protests, matter will not be considered on the merits since it was filed more than 10 working days after protester learned of basis for protest and therefore is untimely under Bid Protest Procedures.

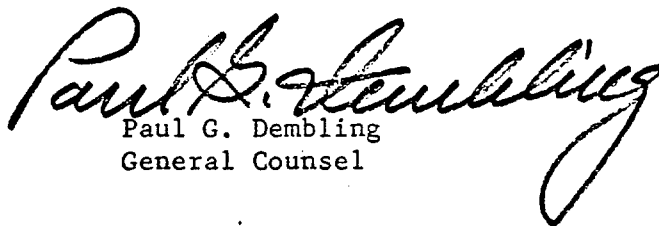
National Beryllia Corporation (NBC) protests the award of a subcontract to Ceradyne, Inc. by Union Carbide Corporation under Union Carbide's contract with the Energy Research and Development Administration at the Oak Ridge Atomic Energy Facility.

NBC asserts that following bid opening Ceradyne was requested to verify its bid and as a result of an audit by Union Carbide, Ceradyne improperly revised its original bid price upward. NBC also contends that Ceradyne's bid price for the three phases of the contract work is not reasonable because the amount bid would not cover the current direct costs of performing the contract and in addition provides no protection for future price increases in the price of materials.

In Optimum Systems, Incorporated, 54 Comp. Gen. 767 (1975), 75-1 CPD 166, our Office held that we would only consider protests against the award of subcontracts by prime contractors in certain circumstances. Basically, these circumstances fall into five categories: first, where the prime contractor is acting as purchasing agent of the Government; second, in cases where the Government's active or direct participation in the selections of the subcontractor has the net effect of causing or controlling the rejection or selection of a potential subcontractor, or has significantly limited subcontract sources; third, where fraud or bad faith in Government approval of the subcontract award or proposed award is shown; fourth, where the subcontract award is "for" an agency of the Federal Government; and fifth, where the questions concerning the awards of subcontracts are submitted by officials of Federal agencies who are entitled to advance decisions from our Office.

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It is not clear from the record that the matter comes within any of the stated categories. However, we need not resolve that question because in any event, we believe the protest to be untimely raised and, therefore, not for consideration. Our Bid Protest Procedures require protests based on other than alleged improprieties in the solicitation to be filed within 10 working days after the basis for protest is known or should have been known, whichever is earlier. 4 C.F.R. 20.2(b)(2) (1976). NBC states that at a July 30, 1976 meeting with Union Carbide it obtained the information which resulted in the protest with our Office. Since NBC's protest was not filed until August 23, 1976, the protest is untimely and will not be considered on its merits.


Paul G. Dembling
General Counsel